FILED
MAY 24 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 870.

ROBERT B. CURTIS and WILLIAM L. CLAY,
Petitioners,

vs.

WILLIAM BOEGER, Warden, St. Louis City Jail,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

MOTION

For Leave to File Petition for Rehearing Out of Time

and

PETITION FOR REHEARING.

ROBERT B. CURTIS,
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ST. LOUIS LAW PRINTING CO., INC., 411-15 N. Eighth St., 63101. CEntral 1-4477.

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for Leave to File Petition for Rehearing Out of Time.

Come now Robert B. Curtis and William L. Clay, whose petition for rehearing was denied by this Court on March 20, 1967, and respectfully move that they be granted leave to file the attached petition for rehearing out of time, because:

1. Since denying petitioners' original petition for rehearing, this Court has granted certiorari in a case raising the identical question presented here; and

2. Proceedings have been instituted since the denial of the original petition for rehearing to disbar petitioner

Curtis from the practice of law solely on the basis of the judgment rendered in this case, and without a hearing, thus severely increasing the already severe penalty imposed upon him without benefit of an impartial jury trial; and

3. Some of the parties to the original petition for rehearing have withdrawn from the case, which makes it possible for these petitioners to limit their petition for rehearing to the single question which is identical to that raised in the case in which certiorari has been granted.

Respectfully submitted,

ROBERT B. CURTIS,
2847 Union Boulevard,
St. Louis, Missouri,
Attorney for Petitioners.

Certificate of Counsel.

I hereby certify that this motion for leave to file petition for rehearing out of time is presented in good faith and not for delay and is based on grounds which are confined to intervening circumstances.

.....

PETITION FOR REHEARING.

PETITIONERS' STATEMENT.

Petitioners pray that this Court grant rehearing of its order of February 13, 1967, denying the petition for a Writ of Certiorari, and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in the above-entitled case (Number 870) as prayed for in the petition filed on December 16, 1966, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. At the time of this Court's order of February 13, 1967, there was no indication that the Sixth Amendment's guarantee of an impartial jury trial would be made applicable by the Fourteenth Amendment to summary state proceedings for criminal contempt of court. However, on April 17, 1967, this Court granted certiorari in **Bloom v. Illinois**, No. 1070. One of the questions presented in that case is, "Does defendant have Fourteenth Amendment right to jury trial on Illinois criminal contempt resulting in two-year prison sentence?" 35 Law Week 3363 (April 18, 1967).

Petitioners were convicted of constructive criminal contempt for violating a temporary restraining order which had issued only three hours before the alleged contempt occurred. They were both sentenced to jail terms of 270 days and fined $1,000. They were tried and convicted without benefit of an impartial jury by the same judge who had issued the restraining order. Missouri law denies the right of jury trial to one accused of criminal contempt of court. **State v. Sheperd**, 76 S. W. 79; **De May v. Liberty Foundry Co.**, 37 S. W. 2d 648. Furthermore, Missouri statutes give a judge unlimited discretion in imposing sentence. Mo. Rev. Stat., Sec. 476.120 (1959).

In petitioners' original petition for certiorari, one of the questions presented was, "3. Whether sentences and fines of more than six months and $300 respectively imposed without jury trial are constitutionally premissible in state courts." It is arguable that sentences and fines in this amount would be permissible in the federal courts under this Court's decision in **Cheff v. Schnackenberg**, 384 U. S. 373. However, most of the parties withdrew from this case after this Court denied their original petition for rehearing on March 20, 1967. The two petitioners who remain were both sentenced to 270 days in jail and $1,000 fines. These sentences clearly would be impermissible under **Cheff v. Schnackenberg**, supra. Hence, the agonizing problem of deciding whether something which is arguably permissible under the Sixth Amendment directly might be unconstitutional under the Fourteenth Amendment has been eliminated. The issue which remains, viz., Does a defendant have a Fourteenth Amendment right to an impartial jury trial in a state proceeding for criminal contempt which results in a sentence of 270 days and $1,000 fine?, is identical in every meaningful way with that raised in **Bloom v. Illinois**, 220 N. E. 2d 475, cert. granted, 35 L. W. 3363 (1967).

2. On May 8, 1967, the Twenty-Second Judicial Circuit Bar Committee filed in the Supreme Court of Missouri a "Motion to Remove Respondent (Curtis) From Roll of Attorneys and for Disbarment." A copy of the motion is appended hereto as Exhibit A. The motion alleges that petitioner Curtis' conviction of constructive criminal contempt in this case was "of a crime involving moral turpitude," as contemplated by Mo. Rev. Stat., Sec. 484.190 (1959), and asks that he be disbarred pursuant to Sec. 484.240. The pertinent parts of these statutes provide:

> **Sec. 484.190:** "Any attorney or counselor at law may be removed or suspended from practice in the courts of this state for any of the following reasons:

(1) If he be convicted of any criminal offense involving moral turpitude; . . ."

Sec. 484.240: "If the charge allege a conviction for any criminal offense involving moral turpitude, the court shall, on the production of the record of such conviction, remove the attorney so convicted or suspend such attorney from practice for a limited time, according to the nature of the offense, as the court may deem just, **and without further trial** . . ." (Emphasis added.)

Hence it is plain that the penalty imposed upon petitioner Curtis without benefit of an impartial jury trial will exceed the 270 days and $1,000 already ordered, and may deprive him permanently of his profession and his means of earning a livelihood.

3. The convictions in this case spring from picketing against racially discriminatory hiring practices. As the Court is aware, discrimination in hiring practices continues in many parts of the country despite the best efforts of dedicated citizens to eradicate it. The Court is further aware from the many cases it has decided in recent years that peaceful picketing has become the most common form of protesting racial injustice. It has become the most common method of protest because it is virtually the only means available to the disadvantaged persons against whom the discrimination is directed. The response of those who wish to maintain the status quo has been the same as of those who wished to maintain the status quo in labor relations in an earlier day—the injunction.

Petitioners were convicted of "conspiring with" and "directing" others to violate a temporary restraining order in this case. Although they have always maintained their innocence of those charges, petitioners concede that they have exhausted whatever remedies were available to them to review the correctness of the ambiguous and

vague findings of fact. But even assuming their guilt, it is clear that the penalties imposed upon them by summary proceedings without an impartial jury were enormous—far exceeding whatever punishment was required to vindicate the majesty of the law, and the dignity of the court. The effect of permitting this judgment to stand is to hand a weapon of oppression to those who would deny the justice of petitioners' cause.

This is not to say that the justice of the cause is an excuse for violating a valid injunction. It is to say only that the sentences which may be imposed are unlimited, summary proceedings are subject to abuse as a means of oppression, and their proper role of vindicating the dignity of the law becomes lost.

This problem is recurring with greater and greater frequency today. The problem is also important because the injunction and summary proceedings are the major obstacle between the disadvantaged and the achievement of those forms of equality not already guaranteed by law. State courts need the guidance of this Court in determining the limits to which they may go in imposing sentences for alleged violations of civil rights injunctions.

CONCLUSION.

For the reasons set forth above, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

ROBERT B. CURTIS,
2847 Union Blvd.,
St. Louis, Missouri,
Attorney for Petitioners.

Certificate of Counsel.

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is based on grounds which are confined to intervening circumstances.

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